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**ADA HIGHLIGHTS -- TITLE II  
STATE AND LOCAL GOVERNMENT SERVICES**

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## Title II Highlights

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## L Who is Covered by Title II of the ADA

- The title II regulation covers "public entities."
- "Public entities" include any State or local government and any of its departments, agencies, or other instrumentalities.
- All activities, services, and programs of public entities are covered, including activities of State legislatures and courts, town meetings, police and fire departments, motor vehicle licensing, and employment.
  - Unlike section 504 of the Rehabilitation Act of 1973, which only covers programs receiving Federal financial assistance, title II extends to all the activities of State and local governments whether or not they receive Federal funds.
- Private entities that operate public accommodations, such as hotels, restaurants, theaters, retail stores, dry cleaners, doctors' offices, amusement parks, and bowling alleys, are not covered by title II but are covered by title III of the ADA and the Department's regulation implementing title III.
- Public transportation services operated by State and local governments are covered by regulations of the Department of Transportation.
  - DOT's regulations establish specific requirements for transportation vehicles and facilities, including a requirement that all new busses must be equipped to provide services to people who use wheelchairs.

## II. Overview of Requirements

- State and local governments --
  - May not refuse to allow a person with a disability to participate in a service, program, or activity simply because the person has a disability.
    - For example, a city may not refuse to allow a person with epilepsy to use parks and recreational facilities.
  - Must provide programs and services in an integrated setting, unless separate or different measures are necessary to ensure equal opportunity.
  - Must eliminate unnecessary eligibility standards or rules that deny individuals with disabilities an equal opportunity to enjoy their services, programs or activities unless "necessary" for the provisions of the service, program or activity.
    - Requirements that tend to screen out individuals with disabilities, such as requiring a driver's license as the only acceptable means of identification, are also prohibited.



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- Safety requirements that are necessary for the safe operation of the program in question, such as requirements for eligibility for drivers' licenses, may be imposed if they are based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities.
- Are required to make reasonable modifications in policies, practices, and procedures that deny equal access to individuals with disabilities, unless a fundamental alteration in the program would result.
- For example, a city office building would be required to make an exception to a rule prohibiting animals in public areas in order to admit guide dogs and other service animals assisting individuals with disabilities.
- Must furnish auxiliary aids and services when necessary to ensure effective communication, unless an undue burden or fundamental alteration would result.
- May provide special benefits, beyond those required by the regulation, to individuals with disabilities.
- May not place special charges on individuals with disabilities to cover the costs of measures necessary to ensure nondiscriminatory treatment, such as making modifications required to provide program accessibility or providing qualified interpreters.
- Shall operate their programs so that, when viewed in their entirety, they are readily accessible to and usable by individuals with disabilities.

### III. "Qualified Individuals with Disabilities"

- Title II of the Americans with Disabilities Act provides comprehensive civil rights protections for "qualified individuals with disabilities."
- An "individual with a disability" is a person who —
  - has a physical or mental impairment that substantially limits a "major life activity,"
  - has a record of such an impairment, or
  - is regarded as having such an impairment.
- Examples of physical or mental impairments include, but are not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism. Homosexuality and bisexuality are not physical or mental impairments under the ADA.



## II Highlights

- "Major life activities" include functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
- Individuals who currently engage in the illegal use of drugs are not protected by the ADA when an action is taken on the basis of their current illegal use of drugs.
- "Qualified" individuals.
  - A "qualified" individual with a disability is one who meets the essential eligibility requirements for the program or activity offered by a public entity.
  - The "essential eligibility requirements" will depend on the type of service or activity involved.
    - For some activities, such as State licensing programs, the ability to meet specific skill and performance requirements may be "essential."
    - For other activities, such as where the public entity provides information to anyone who requests it, the "essential eligibility requirements" would be minimal.

## **IV. Program Access**

- State and local governments--
  - Must ensure that individuals with disabilities are not excluded from services, programs, and activities because buildings are inaccessible.
  - Need not remove physical barriers, such as stairs, in all existing buildings, as long as they make their programs accessible to individuals who are unable to use an inaccessible existing facility.
  - Can provide the services, programs, and activities offered in the facility to individuals with disabilities through alternative methods, if physical barriers are not removed, such as --
    - Relocating a service to an accessible facility, e.g., moving a public information office from the third floor to the first floor of a building.
    - Providing an aide or personal assistant to enable an individual with a disability to obtain the service.
    - Providing benefits or services at an individual's home, or at an alternative accessible site.
  - May not carry an individual with a disability as a method of providing program access, except in "manifestly exceptional" circumstances.



- Are not required to take any action that would result in a fundamental alteration in the nature of the service, program, or activity or in undue financial and administrative burdens. However, public entities must take any other action, if available, that would not result in a fundamental alteration or undue burdens but would ensure that individuals with disabilities receive the benefits or services.

## V. Integrated Programs

- Integration of individuals with disabilities into the mainstream of society is fundamental to the purposes of the Americans with Disabilities Act.
- Public entities may not provide services or benefits to individuals with disabilities through programs that are separate or different, unless the separate programs are necessary to ensure that the benefits and services are equally effective.
- Even when separate programs are permitted, an individual with a disability still has the right to choose to participate in the regular program.
  - For example, it would not be a violation for a city to offer recreational programs specially designed for children with mobility impairments, but it would be a violation if the city refused to allow children with disabilities to participate in its other recreational programs.
- State and local governments may not require an individual with a disability to accept a special accommodation or benefit if the individual chooses not to accept it.

## VI. Communications

- State and local governments must ensure effective communication with individuals with disabilities.
- Where necessary to ensure that communications with individuals with hearing, vision, or speech impairments are as effective as communications with others, the public entity must provide appropriate auxiliary aids.
  - "Auxiliary aids" include such services or devices as qualified interpreters, assistive listening devices, telephone captioning and decoders, telecommunications devices for deaf persons (TDD's), videotext displays, readers, taped texts, Brailled materials, and large print materials.
  - A public entity may not charge an individual with a disability for the use of an auxiliary aid.
- Telephone emergency services, including 911 services, must provide direct access to individuals with speech or hearing impairments.



- Public entities are not required to provide auxiliary aids that would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. However, public entities must still furnish another auxiliary aid, if available, that does not result in a fundamental alteration or undue burdens.

## VII. New Construction and Alterations

- Public entities must ensure that newly constructed buildings and facilities are free of architectural and communication barriers that restrict access or use by individuals with disabilities.
- When a public entity undertakes alterations to an existing building, it must also ensure that the altered portions are accessible.
- The ADA does not require retrofitting of existing buildings to eliminate barriers, but does establish a high standard of accessibility for new buildings.
  - Public entities may choose between two technical standards for accessible design: The Uniform Federal Accessibility Standard (UFAS), established under the Architectural Barriers Act, or the Americans with Disability Act Accessibility Guidelines, adopted by the Department of Justice for places of public accommodation and commercial facilities covered by title III of the ADA.
  - The elevator exemption for small buildings under ADA Accessibility Guidelines would not apply to public entities covered by title II.

## VIII. Enforcement

- Private parties may bring lawsuits to enforce their rights under title II of the ADA. The remedies available are the same as those provided under section 504 of the Rehabilitation Act of 1973. A reasonable attorney's fee may be awarded to the prevailing party.
- Individuals may also file complaints with appropriate administrative agencies.
  - The regulation designates eight Federal agencies to handle complaints filed under title II.
  - Complaints may also be filed with any Federal agency that provides financial assistance to the program in question, or with the Department of Justice, which will refer the complaint to the appropriate agency.

## IX. Complaints

- Any individual who believes that he or she is a victim of discrimination prohibited by the regulation may file a complaint. Complaints on behalf of classes of individuals are also permitted.



- Complaints should be in writing, signed by the complainant or an authorized representative, and should contain the complainant's name and address and describe the public entity's alleged discriminatory action.
- Complaints may be sent to --

Coordination and Review Section  
Civil Rights Division  
U.S. Department of Justice  
P.O. Box 66118  
Washington, D.C. 20035-6118.

- Complaints may also be sent to agencies designated to process complaints under the regulation, or to agencies that provide Federal financial assistance to the program in question.

## X. Designated Agencies

The following agencies are designated for enforcement of title II for components of State and local governments that exercise responsibilities, regulate, or administer services, programs, or activities in the following functional areas --

- (1) Department of Agriculture: Farming and the raising of livestock, including extension services.
- (2) Department of Education: Education systems and institutions (other than health-related schools), and libraries.
- (3) Department of Health and Human Services: Schools of medicine, dentistry, nursing, and other health-related schools; health care and social service providers and institutions, including "grass-roots" and community services organizations and programs; and preschool and daycare programs.
- (4) Department of Housing and Urban Development: State and local public housing, and housing assistance and referral.
- (5) Department of Interior: Lands and natural resources, including parks and recreation, water and waste management, environmental protection, energy, historic and cultural preservation, and museums.
- (6) Department of Justice: Public safety, law enforcement, and the administration of justice, including courts and correctional institutions; commerce and industry, including banking and finance, consumer protection, and insurance; planning, development, and regulation (unless otherwise assigned); State and local government support services; and all other government functions not assigned to other designated agencies.
- (7) Department of Labor: Labor and the work force.
- (8) Department of Transportation: Transportation, including highways, public transportation, traffic management (non-law enforcement), automobile licensing and inspection, and driver licensing.



## XI. Technical Assistance

- The ADA requires that the Federal agencies responsible for issuing ADA regulations provide "technical assistance."
- Technical assistance is the dissemination of information (either directly by the Department or through grants and contracts) to assist the public, including individuals protected by the ADA and entities covered by the ADA, in understanding the new law.
- Methods of providing information include, for example, audio-visual materials, pamphlets, manuals, electronic bulletin boards, checklists, and training.
- The Department issued for public comment on December 5, 1990, a government-wide plan for the provision of technical assistance.

The Department's efforts focus on raising public awareness of the ADA by providing—

- Fact sheets and pamphlets in accessible formats,
  - Speakers for workshops, seminars, classes, and conferences,
  - An ADA telephone information line, and
  - Access to ADA documents through an electronic bulletin board for users of personal computers.
- The Department has established a comprehensive program of technical assistance relating to public accommodations and State and local governments.
- Grants will be awarded for projects to inform individuals with disabilities and covered entities about their rights and responsibilities under the ADA and to facilitate voluntary compliance.
  - The Department will issue a technical assistance manual by January 26, 1992, for individuals or entities with rights or duties under the ADA.

For additional information, contact:

554-8925

Office on the Americans with Disabilities Act  
Civil Rights Division  
U.S. Department of Justice  
P.O. Box 66118  
Washington, D.C 20035-6118  
(202) 514-0301 (Voice)  
(202) 514-0383 (TDD)  
(202) 514-6193 (Electronic Bulletin Board).





